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In the Supreme Court of the United States

UNITED STATES DEPARTMENT OF DEFENSE, ET AL.,
PETITIONERS

v.

AMERICAN CIVIL LIBERTIES UNION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR HUMAN RIGHTS WATCH, THE INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, AND AMNESTY INTERNATIONAL AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether the government can lawfully rely on Exemption 7(F) of the Freedom of Information Act, 5 U.S.C. § 552(b)(7)(F), to withhold photographs depicting the abuse of prisoners held in U.S. custody without identifying with reasonable specificity any individuals who could reasonably be expected to be endangered by the photographs' release.

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INTEREST OF *AMICI CURIAE*[1]

Amicus curiae Human Rights Watch (HRW) is one of the leading independent organizations dedicated to defending and protecting the human rights of people around the world. For over 30 years, HRW has investigated and exposed human rights violations and challenged governments and international tribunals to end abusive practices, respect human rights, and hold abusers accountable for their actions.

To fulfill its mission, HRW investigates allegations of abuse in the United States and throughout the world by gathering information from governmental and other sources, interviewing witnesses, and issuing detailed reports. Where abuse of human rights has been found, HRW advocates for the victims before governmental officials and in the court of public opinion. For example, recent reports issued by HRW document: the disproportionate infliction of corporal punishment on students with disabilities in the United States; the abusive use of religious counseling, indefinite detention and flawed trials in Saudi Arabia's counterterrorism program; harm to Israeli civilians from rocket attacks launched by Palestinian

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members or their counsel made a monetary contribution to its preparation or submission. Both petitioners and respondents have consented to the filing of this brief. Petitioners' and respondents' written consents to the filing of this brief have been filed with the Clerk. Counsel of record for petitioners and respondents received notice of *amici*'s intent to file this brief more than ten days before the due date.

armed groups in Gaza; dysfunction, abuse and impunity in the police forces of India; institutionalized discrimination against gays and lesbians in Burundi; arbitrary killings by security forces in Nigeria; and the failure to test thousands of rape kits collected from victims of sexual assaults in Los Angeles, California.

Amicus curiae International Center for Transitional Justice (ICTJ) was established in the spring of 2001 to assist countries pursuing accountability for mass atrocities or human rights abuses, as well as unresolved historical injustices or systemic abuse, in order to further peace, justice and democratic objectives. Transitional justice encompasses five key approaches to achieving accountability: prosecuting perpetrators, documenting violations, reforming institutions, compensating victims and facilitating reconciliation. Working in societies newly emerging from repressive regimes and armed conflicts, as well as established democracies with unresolved histories of past injustices, ICTJ works to provide comparative information, legal and policy analyses, documentation and strategic research to local governmental and nongovernmental institutions and organizations on the policies and practice of transitional justice approaches. While ICTJ does not itself engage in documenting human rights abuses, its work supports those who are seeking to uncover the truth about what happened as an important step toward accountability.

In 2008, ICTJ launched its U.S. Accountability Project to promote in the United States the same emphasis on truth and accountability that ICTJ has brought to more than 30 countries around the world.

Along with other organizations, ICTJ called upon the President of the United States to assure that all federal departments and agencies comply fully with the letter and spirit of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and joined with respondent American Civil Liberties Union and others in seeking the release of additional photographs of mistreatment of detainees as the first step in the process of achieving justice for the victims of such abuse.

Amicus curiae Amnesty International (AI) is a worldwide movement of people who campaign for internationally recognized human rights. AI conducts research into abuses of human rights and publicizes its findings to 2.2 million members, supporters and subscribers in over 150 countries, who mobilize public pressure to demand that all governments respect the rule of law. For example, AI has led international campaigns to stop violence against women, defend the rights and dignity of those trapped in poverty, abolish the death penalty, oppose torture, free prisoners of conscience, protect the rights of refugees and immigrants, and regulate the global arms trade.

AI makes extensive use of photographic, video and audio evidence to support its campaigns against human rights abuses. Recently, for example, AI published photographs and testimonies showing the injuries and beatings inflicted by Honduran police on peaceful protesters in Tegucigalpa in response to the military-backed coup in June of this year.

Amici's Reliance On Visual Media And FOIA

Visual media constitute an essential component of *amici*'s fact-gathering and advocacy missions.

Photographic evidence is often the most compelling and unassailable proof of official wrongdoing, as well as the most effective means to convey to the public the magnitude of the offenses and to mobilize public opinion and support to effectuate change. In addition to detailed written reports, therefore, *amici* also issue video and audio files and photo essays, proving in ways that cannot be achieved with mere narrative the impact and scope of the offenses uncovered.

FOIA is an important tool for human rights organizations. Campaigns for human rights rely on meticulous research. Information in United States government files, including law enforcement files, is a crucial resource in this process. FOIA stands virtually alone in the world as the embodiment of a national commitment to governmental transparency and accountability. Access to information that could prove embarrassing to the Federal Government is critical to the process of holding officials accountable for their actions. The exemption to disclosure that petitioners Department of Defense and Department of the Army (collectively, the Government) seek to obtain in this action strikes at the heart of the mission pursued by HRW, ICTJ, AI and other human rights organizations, both domestically and internationally.

Amici harbor no illusions about the capacity of evil people to perform heinous acts. Indeed, it is precisely because *amici* have dedicated themselves to the task of shining a light on abuses of human rights that have been breathtaking in their depravity that they view with such alarm the broad—virtually boundless—exception that the Government here seeks to carve out of FOIA. The Government seeks

to withhold photographs depicting wrongdoing because it fears that extremists will seize on the photographs as an excuse to perform violent acts. Those who engage in acts of violence and cruelty do not need excuses. They need secrecy.

In furtherance of their mission to advance the cause of human rights and to hold accountable those who have abused human rights, *amici* urge the Court to deny the Government's petition for a writ of certiorari.

SUMMARY OF ARGUMENT

Photographic evidence can be a particularly effective means of telling the stories of victims of human rights abuse, and of galvanizing public opinion to support efforts to deter such conduct and, when it occurs, to hold abusers accountable for their actions. *Amici* and other human rights organizations rely on pictures along with other evidence to further their missions. Many advances in human rights, at home and abroad, can be traced, at least in part, to information conveyed through pictures along with narrative accounts, statistics, and other forms of information. Were the Government to succeed in its efforts to withhold the photographs at issue in this case based on its extraordinarily expansive reading of Exemption 7(F), the resulting harm to the advancement of the cause of human rights would be incalculable.

Indeed, were the Government to succeed in its argument in this case, Exemption 7(F) would swallow the rule. The Government does not (and could not) claim that there is any separate or special provision in FOIA regarding the disclosure of pictures. Accordingly, any reading of Exemption 7(F) that is broad

enough to encompass the pictures the Government wants to hide in this case would necessarily cover information in any form—text, statistics, reports, etc.—that could be anticipated to lead a person inclined towards violence to engage in a violent act against anyone, anywhere. Moreover, the potential victims of such violence would not, under the Government's interpretation of Exemption 7(F), need to be Americans. Under the Government's interpretation of the statute, information in a law enforcement file that might be thought capable of leading one Somali pirate to strike another Somali pirate would be exempt from disclosure under FOIA. Or, under the Government's view, photos of abuses in Darfur that are in law enforcement files and critical to obtaining protection for the victims of the Sudanese janjaweed militias would be withheld on the theory that the perpetrators of the violence might seize on the photos as an excuse to continue their campaign of rape and murder. If the boundary to the statutory exemption is the capacity of an extremist or fringe group anywhere in the world to engage in a violent act against anyone anywhere, then there is truly no boundary to the exemption at all.

Oddly, while Exemption 7(F) would, under the Government's interpretation, be extraordinarily broad, it would at the same time be extremely shallow in other respects. Exemption 7(F) applies only to records or information "compiled for law enforcement purposes." In the Government's interpretation of FOIA, the same information, picture or report that can be withheld if compiled for law enforcement purposes will be subject to disclosure if it was obtained or generated by the Government for reasons other than law enforcement, regardless of the quan-

tity of mayhem it might cause. Similarly, the Government's unbounded reading of the exemption is not tied in any way to protecting or furthering law enforcement.

The Government's reading of Exemption 7(F) is so untenable, and the decision below so clearly correct, that the Court should deny review forthwith. The Second Circuit read Exemption 7(F) in a manner that is faithful to the language, purpose and history of the statute. In contrast, the reading urged by the Government would open a gaping hole in the statute, and human rights advances and protections will be severely stymied.

The Court should deny the Government's petition for review, in light of the clarity of FOIA, the absence of any conflict, and the clearly correct decision of the Second Circuit.

ARGUMENT

A. FOIA's Mandate For Disclosure Is Intentionally Broad; Exceptions Are Narrowly Construed.

FOIA is the most prominent federal law concerning the public's right of access to information compiled and maintained by the Federal Government. Congress enacted FOIA to protect the public's interest in the free flow of government information to ensure that the people "know what their government is up to," *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 772-73 (1988) (internal quotation and emphasis omitted), and "to ensure an informed citizenry, [which is] vital to the functioning of a democratic society, needed to check against corruption and to hold the [government] accountable to the governed," *NLRB v. Robbins Tire*

& Rubber Co., 437 U.S. 214, 242 (1978); *see also Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004) (describing FOIA as "a structural necessity in a real democracy").

On July 4, 1966, after years of congressional debate, President Lyndon B. Johnson signed FOIA into law, with the declaration that "'[FOIA] springs from one of our most essential principles: A democracy works best when the people have all the information that the security of the nation permits. No one should be able to pull the curtain of secrecy around decisions which can be revealed without injury to the public interest.'" White House Press Release, Statement by the President Upon Signing S. 1160 (July 4, 1966), *reprinted in* Att'y Gen.'s Mem. on the Public Information Section of the Administrative Procedures Act, at II (June 1967) [hereinafter Statement by the President Upon Signing S. 1160]. President Johnson's views of FOIA echoed those of the House report, which declared that "[t]he right of the individual to be able to find out how his Government is operating can be just as important to him as his right to privacy. . . . [FOIA] strikes a balance considering all these interests." H.R. Rep. No. 89-1497, at 6 (1966), *reprinted in* 1966 U.S.C.C.A.N. 1853, 2423.

By way of background, FOIA amended section 3 of the Administrative Procedure Act of 1946 (APA). In its original form, the APA "set forth uniform standards for government administrative actions affecting the public; it restated the law of judicial review permitting the public to appeal to the courts about wrongful administrative actions; it provided for public participation in an agency's rulemaking activities. But most important[,] it required agencies

to keep the public currently informed of their organization, procedures, and rules." H.R. Rep. No. 89-1497, at 3, *reprinted in* 1966 U.S.C.C.A.N. at 2420. However, for decades after its enactment, the APA "was being interpreted to restrict information availability" and was used as a tool for ensuring government secrecy. H.R. Rep. No. 104-795, at 7 (1996), *reprinted in* 1996 U.S.C.C.A.N. 3309, 3450. Thus, in an effort to remove "impediments to [the] public['s] access to information," Congress enacted FOIA. *Id.*

Since its enactment, Congress has amended FOIA on multiple occasions.[2] Each amendment underscored and promoted FOIA's broad policy and "'general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.'" *Dep't of the Air Force v. Rose*, 425 U.S. 352, 360-61 (1976) (quoting S. Rep. No. 89-813, at 3 (1965)). Throughout all of FOIA's amendments, Congress has not retreated from the position that, when balancing opposing interests, "[i]t is not necessary to conclude that to protect one of the interests, the other must, of necessity, either be abrogated or substantially subordinated." S. Rep. No. 89-813, at 3 (1965), *reprinted in* Subcomm. on

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[2] Congress amended FOIA in 1974, 1976, 1986, 1996, 2002 and 2007. *See* Act of Nov. 21, 1974, Pub. L. No. 93-502, 88 Stat. 1561; Government in Sunshine Act of 1976, Pub. L. No. 94-409, 90 Stat. 1241; Freedom of Information Reform Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207; Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231, 110 Stat. 3048; Intelligence Authorization Act of 2003, Pub. L. No. 107-306, 116 Stat. 2383 (2002); Open Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524.

Admin. Practice & Procedure of the Senate Comm. on the Judiciary, *Freedom of Information Act Source Book: Legislative Materials, Cases, Articles*, S. Doc. 93-82, at 38 (1974). Thus, FOIA embodies Congress's determination of how best to balance the public's interest in access to information with the interests of the Federal Government, the interest of individuals in the protection of privacy and all other competing interests. However, Congress has never disavowed President Johnson's declaration that the "freedom of information is so vital that only the national security, not the desire of public officials or private citizens, should determine when it must be restricted." Statement by the President Upon Signing S. 1160.

As this Court has repeatedly made clear, attempts to withhold information from disclosure under FOIA are governed by the principle that disclosure is the rule, subject to specific exemptions that must be read narrowly:

> Upon request, FOIA mandates disclosure of records held by a federal agency, see 5 U.S.C. § 552, unless the documents fall within enumerated exemptions, see § 552(b). "[T]hese limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act," *Department of Air Force v. Rose*, 425 U. S. 352, 361 (1976); "[c]onsistent with the Act's goal of broad disclosure, these exemptions have been consistently given a narrow compass," *Department of Justice v. Tax Analysts*, 492 U. S. 136, 151 (1989); *see also FBI v. Abramson*, 456 U. S. 615, 630 (1982) ("FOIA exemptions are to be narrowly construed").

Dep't of the Interior v. Klamath Water Users Protective Ass'n, 532 U.S. 1, 7-8 (2001).

The right to obtain information through FOIA has been a tremendous aid to truth-seeking even outside the United States. In Guatemala, for example, a United Nations-supported Historical Clarification Commission was established to investigate a period of internal conflict and repression that had lasted over 30 years. Although the commission "was stonewalled at every turn by [Guatemalan] military, intelligence and security officials, who refused to turn over internal files on the grounds that they had been destroyed during the war, or simply did not exist," investigators were nevertheless able to "provide some historical and judicial accountability" for events during the war by gathering information from "victims' accounts, forensic records, published human rights reports, perpetrators' testimonies and thousands of declassified U.S. documents obtained by the National Security Archive under the Freedom of Information Act . . . ."[3] The commission issued its report in early 1999 concluding, in part, that the Central Intelligence Agency's training of Guatemalan military officers in counterinsurgency and intelligence techniques "had significant bearing on human rights violations during the armed conflict."[4] In

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[3] Kate Doyle, *The Guatemalan Police Archives, National Security Archive Electronic Briefing Book No. 170* (Nov. 21, 2005), *available at* http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB170/index.htm.

[4] Guatemalan Comm'n for Historical Clarification, *Guatemala, Memory of Silence: Report of the Commission for Historical Clarification, Conclusions and Recommendations* (1999), (continued)

light of that conclusion, the President of the United States declared that U.S. "support for military forces or intelligence units which engaged in violent and widespread repression of the kind described in the report was wrong . . . [a]nd the United States must not repeat that mistake."[5]

B. Photographs Are Records That Must Be Disclosed Under FOIA.

There is no dispute that the photographs at issue here are "records" subject to FOIA. As defined by FOIA, the term "record" includes "any information that would be an agency record . . . when maintained by an agency in any format, including an electronic format." 5 U.S.C. § 552(f)(2)(A). In keeping with this broad definition, the Federal Government has frequently produced photographs in response to FOIA requests.[6]

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available at http://shr.aaas.org/guatemala/ceh/report/english/toc.html.

[5] Charles Babington, *Clinton: Support for Guatemala was Wrong*, Wash. Post, Mar. 11, 1999, at A1.

[6] *See, e.g.*, National Security Archive, *Return of the Fallen, Pentagon Releases Hundreds More War Casualty Homecoming Images*, Electronic Briefing Book No. 152, Apr. 28, 2005, http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB152/index.htm (Pentagon released more than 700 photographs of the arrival ceremonies for deceased military personnel in response to FOIA requests and lawsuit); Kelly Chernenkoff, *Defense Department Releases Flurry of Photos of Botched Plane Flyover*, FoxNews.com, July 31, 2009, http://www.foxnews.com/politics/2009/07/31/defense-department-releases-flurry-photos-botched-plane-flyover (146 photos of controversial Manhattan flyover released in response to FOIA requests).

C. Photographs Have Played An Important Role In Protecting Human Rights, Here And Abroad.

For *amici* and others dedicated to the advancement of human rights, access to photographs can be particularly important in proving to a skeptical world that human rights have been abused, in galvanizing public opinion, and in moving courts to hold perpetrators accountable and legislatures to enact remedial laws. For example, the compelling photographs of the civil rights movement helped lead to the enactment of landmark civil rights laws in the 1960's:

> [On July 2] President Lyndon Johnson signed the Civil Rights Act of 1964, which outlawed discrimination at the polls and in schools, public facilities, and places of employment. By then [Charles Moore's] Birmingham photographs had become so much a part of the public memory of those events that they even received some measure of credit for the passage of the legislation. As the historian Arthur Schlesinger, Jr., later said, "The photographs of Bull Connor's police dogs lunging at the marchers in Birmingham did as much as anything to transform the national mood and make legislation not just necessary, which it had long been, but possible."

Michael S. Durham, *Powerful Days: The Civil Rights Photography of Charles Moore* 32 (1991).

Similarly, the photographs of Emmett Till's mutilated body that were published by Jet magazine in 1955 have been credited with spurring the civil rights movement in the United States, leading to the passage of the Civil Rights Act of 1957, Pub. L. No.

85-315, 71 Stat. 634.[7] Indeed, the haunting images of the murdered boy still retain their power to move the public, and recently led to the enactment of the Emmett Till Unsolved Civil Rights Crime Act of 2007, Pub. L. No. 110-344, 122 Stat. 3934.

More recently, human rights organizations have harnessed the power of pictures to advance such causes as the banning of anti-personnel landmines and cluster munitions. The use of photographic imagery played a prominent role in the adoption of the 1997 Mine Ban Treaty, an international agreement that bans antipersonnel landmines.[8] The human rights and governmental organizations that

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[7] *See* Keith A. Beauchamp, *The Murder of Emmett Louis Till—The Spark That Started the Civil Rights Movement*, http://www.black-collegian.com/African/till2005-2nd.shtml; Noah Adams, *Emmett Till and the Impact of Images—Photos of Murdered Youth Spurred Civil Rights Activism*, National Public Radio, June 23, 2004, http://www.npr.org/templates/story/story.php?storyId=1969702; Dwight D. Eisenhower Presidential Library and Museum, *Civil Rights: The Emmett Till Case*, http://www.eisenhower.archives.gov/Research/Digital_Documents/Civil_Rights_Emmett_Till_Case/EmmettTillCase.html; *see also* Statement of the Attorney General on the Proposed Civil Rights Legislation Before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee 19 (Feb. 14, 1957) ("All of us here are shocked, I am sure, at cases such as that of Emmett Louis Till . . . ."), *available at* http://www.eisenhower.achives.gov/Research/Digital_Documents/Civil_Rights_Civil_Rights_Act/New%20PDFs/Statement_of_the_Attorney_General.pdf.

[8] Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction art. 1 (1997), *available at* http://untreaty.un.org/English/millennium/law/disarmament/xxvi_5E.htm.

led the effort to bring about this treaty used various modes of media—film, photograph, and text—"to draw the world's attention to the scourge of landmines and call for a mine-free world."[9] A similar effort, also making extensive use of photographic images, led to the recent adoption of the Convention on Cluster Munitions.[10]

In short, the use of FOIA, and of photographs and imagery, have long played important roles in advancing the cause of human rights, at home and abroad.

D. The Government's Proposed Interpretation Of Exemption 7(F) Is Incorrect And Unworkable.

The Government here seeks to withhold the release of pictures depicting abuse of detainees in Iraq because it fears that anti-American extremists

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[9] International Campaign to Ban Landmines (ICBL), *10 Years in Force of the Mine Ban Treaty: ICBL Campaigners Celebrate in 65 Countries!* (2009), *available at* http://www.icbl.org/index.php/icbl/layout/set/print/Library/News-Articles/National-Campaigns/1March09events; *see also* Don Hubert, *Occasional Paper #42, The Landmine Ban: A Case Study in Humanitarian Advocacy* 31-32 (Thomas J. Watson Inst. for Int'l Studies 2000) ("Effective use was also made of the visual media including traveling photograph exhibits, videos highlighting the impact of landmines, and televised documentaries.").

[10] *See* Human Rights Watch, *Flooding South Lebanon*, Vol. 20, No. 2(E), at 14 (Feb. 2008), *available at* http://www.hrw.org/sites/default/files/reports/lebanon0208_1.pdf; Norwegian People's Aid, *Image Gallery on Cluster Munitions*, http://npaid.websys.no. The text of the convention is available at http://www.clusterconvention.org/downloadablefiles/ccm77_english.pdf.

will seize on these pictures as an excuse to commit (or continue to commit) acts of violence against American troops, Afghan and Iraqi personnel and civilians, and Americans generally. Certainly, Americans, Iraqis and Afghans (along with almost everyone else) have cause to be concerned about the risk of violence by extremists. FOIA, however, does not provide the authority the Government seeks.

The Government claims to have found the broad authority to withhold anything that would be disturbing to an extremist tucked away in Exemption 7(F), a provision dealing exclusively with information compiled for law enforcement purposes. On its face, this is a most unlikely place for Congress to have hidden an exception of such extraordinary breadth. The court below carefully and methodically analyzed the language, history and purpose of the statute, and concluded correctly that the law simply does not give the Government the broad power it seeks.

Indeed, if the rule were otherwise, there would be nothing left of FOIA. The Government's stated concern in this case is with certain radical Islamists, but the rule the Government proposes would apply to a virtually limitless class of potentially violent individuals and groups. Indeed, almost every governmental action related to law enforcement (and especially any governmental misdeed) can be characterized as one that is likely to be disturbing to an extremist or an extremist group that has demonstrated a propensity for violence. The list of such groups is long and varied, and covers the entire political spectrum from extreme left to extreme right. It is an unfortunate fact of modern life that

extremism does not discriminate—it would be difficult to find any race, religion, national group or cause that does not have a violent fringe element.[11]

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[11] The FBI's list of perpetrators of terrorist acts within the United States includes fringe groups and radical individuals of every type: Al-Qa'ida, American Front Skinheads, Animal Liberation Front, Anti-Communist Alliance, Antonia Martinez Student Commandos, Armed Forces of National Liberation, Armed Forces of Popular Resistance, Armed Resistance Unit, Armenian Secret Army for the Liberation of Armenia, Aryan Nations, Bashir Baesho, Benjamin Nathaniel Smith, Black Brigade, Boricua Revolutionary Front, Buford O'Neal Furrow, Carlos Martinez, Clayton Lee Waagner, Commando Rojo, Communist Workers Party, Concerned Sierra Leone Nationals, Croatian Freedom Fighters, Earth First Organization, Earth Night Action Group, Ejercito Popular Boricua Macheteros, Ejercito Revolucionario Del Pueblo, Eric Robert Rudolph, Eugenio Maria de Hostos International Brigade of the Pedro Albizu Campos Revolutionary Forces, Evan Mecham Eco-Terrorist International Conspiracy, Fuqra, Group for the Liberation of Vieques, Grupo Estrella, Guerrilla Forces of Liberation, Haitian Extremists, Hesham Mohamed Ali Hedayat, Hossein Olya, International Committee Against Nazism, International Islamic Extremists, Iranian Free Army, Iranian Patriotic Army, Islamic Extremists, Jewish Defenders, Jewish Defense League, Jewish Defense League/American Revenge Committee, June 9 Organization, Justice Commandos of the Armenian Genocide, Justice Knights of the Ku Klux Klan, Libyan Revolutionary Committee, Libyan Students, Mark Warren Sands, Mexican Revolutionary Movement, Mujahedin-E-Khalq, National Liberation Movement, Norman David Mayer, United Freedom Front, October 3, Omega 7, Organization Alliance of Cuban Intransigence, Organization of Volunteers for the Puerto Rico Revolution, Pedro Albizu Campos Revolutionary Forces, Pedro Albizu Group Revolutionary Forces, People of Omar, People's Mujahedin Organization of Iran, People's Revolutionary Commandos, Popular Liberation Army, Provisional Coordinating Committee of the Labor Self-

(continued)

Moreover, the list of potential victims is nearly as long and diverse as the list of potential perpetrators. This year alone, reported hate-related incidents in the United States have been targeted against dozens of different and disparate groups and individuals.[12]

These lists just reflect the perpetrators and victims of *domestic* incidents. Under the Government's reading of Exemption 7(F), information compiled for law enforcement purposes could be withheld from disclosure under FOIA if it could incite any person or group to commit a violent act against any person, anywhere—a "heckler's veto" without limit.

Defense Group, Puerto Rican Armed Resistance, Rashid Najib Baz, Raymond Anthony Sandoval, Red Guerrilla Resistance, Republic of Revolutionary, Revenge of the Trees, Revolutionary Commandos of the People/Ready and at War, Revolutionary Communist Party, Revolutionary Communist Youth Brigade, Revolutionary Fighting Group, Sean Michael Gillespie/Aryan Nations, Sheriff's Posse Comitatus, Spokane Bank Robbers, Timothy McVeigh, Terry Nichols, and Up the IRS, Inc. FBI, *Terrorism: 2002-2005* (2007), *available at* http://www.fbi.gov/publications/terror/terrorism2002_2005.pdf.

[12] According to information compiled by the Southern Poverty Law Center, such victims include: abortion clinics/providers, Asians, Assembly of God Church, Baptist Church, Blacks, Catholics, Chileans, Chinese, Ecuadorians, Family Life Worship Center, gay men, Greek Orthodox Church, Hispanics, homeless men, immigrants, Indians, interracial couples, Jehovah's Witnesses, Jews, Lesbians, Mexicans, Mormons, Muslims, Native Americans, police officers, Puerto Ricans, Romanians, Sikhs, Somalis, supporters of same-sex marriage, transgender persons, Unitarian Universalist Fellowship Church, and Whites. Southern Poverty Law Center, *Recent Hate Incidents in the United States* (2009), http://www.splcenter.org/center/petitions/standstrong/index.jsp.

Under the Government's reading of Exemption 7(F), photographs and other records can be withheld from disclosure that would otherwise be required under FOIA if they happen to have been compiled for law enforcement purposes, whether or not withholding the records actually furthers any law enforcement objective or is in any way connected to law enforcement. Yet, at the same time, under the Government's reading of the statute, the power to protect unspecified persons from violence at the hands of extremists that the Government claims to have found in Exemption 7(F) completely disappears if the incendiary photograph or information happens to be in a file that was not compiled for law enforcement purposes. It is inconceivable that Congress could have been so careless and capricious. The conclusion is inescapable that the sweeping authority that the Government claims to have found in Exemption 7(F) simply isn't there, and that the lower court's ruling was correct.

CONCLUSION

Congress decided that disclosure of human rights abuses—including maltreatment of detainees by our own personnel, in violation of statutory law and international treaties—is the "best disinfectant" against the repetition of such wrongs in the future. The overarching policy and structure of FOIA—mandatory disclosure, unless a specified exemption, narrowly construed, permits withholding—was embodied in the statute deliberately and for good reason.

Given the clarity of FOIA, the absence of any conflict in the lower courts, and the clearly correct

decision of the lower court in this case, the Court should deny the petition for a writ of certiorari.

Respectfully submitted.

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